

SECOND REGULAR SESSION

HOUSE BILL NO. 1609

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ROBIRDS, KOLLER, HUNTER (Co-sponsors), COOPER,
MYERS, GASKILL, SHOEMAKER (8), BOUCHER AND HENDERSON.

Read 1st time January 23, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3858L.011

AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to torts and actions for damages.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto one new section, to be
2 known as section 537.327, to read as follows:

**537.327. 1. As used in this section, unless the context provides otherwise, the
2 following terms shall mean:**

3 (1) "Canoe", a watercraft which has an open top and is designed to hold one or
4 more participants;

5 (2) "Canoeing, rafting, kayaking, or tubing", riding in/on, training in/on, using,
6 paddling, or being a passenger in/on a canoe, kayak, raft, or tube including a person
7 assisting a participant;

8 (3) "Equipment", any accessory to a watercraft which is used for propulsion,
9 safety, comfort, or convenience including but not limited to paddles, oars, and personal
10 floatation devices;

11 (4) "Inherent risks of paddlesport activities", those dangers, hazards, or conditions
12 which are an integral part of paddlesport activities in Missouri's free-flowing streams or
13 rivers, including but not limited to:

14 (a) Risks typically associated with watercraft including change in water flow or
15 current, submerged, semi-submerged, and overhanging objects, capsizing, swamping, or
16 sinking of watercraft and resultant injury, hypothermia, and/or drowning;

17 (b) Cold weather or heat-related injuries and illnesses including hypothermia,
18 frostbite, heat exhaustion, heat stroke, and dehydration;

- 19 (c) An "act of nature" which may include rock fall, inclement weather, thunder and
20 lightning, severe and/or varied temperature, weather conditions, and winds including
21 tornadoes;
- 22 (d) Equipment failure or operator error;
- 23 (e) Attack and/or bite by animals;
- 24 (f) Accidents of illnesses occurring in remote places where there are no available
25 medical facilities;
- 26 (5) "Kayak", a watercraft similar to a canoe with a covered top which may have
27 more than one circular opening to hold participants, or designed to permit a participant
28 to sit on top of an enclosed formed seat;
- 29 (6) "Outfitter", any individual, group, club, partnership, corporation or business
30 entity, whether or not operating for profit or not-for-profit, or any employee or agent,
31 which sponsors, organizes, rents, or provides to the general public, the opportunity to use
32 any watercraft by a participant on Missouri's free-flowing streams or rivers;
- 33 (7) "Paddlesport activity", canoeing, rafting, or kayaking in or on a watercraft as
34 follows:
- 35 (a) A competition, exercise, or undertaking that involves a watercraft;
- 36 (b) Training or teaching activities;
- 37 (c) A ride, trip, tour, or other activity, however informal or impromptu, whether
38 or not a fee is paid, that is sponsored by an outfitter;
- 39 (d) A guided trip, tour or other activity, whether or not a fee is paid, that is
40 sponsored by an outfitter;
- 41 (8) "Participant", any person, whether amateur or professional, whether or not a
42 fee is paid, which rents, leases, or uses watercraft or is a passenger on a rented, leased, or
43 used watercraft participating in a paddlesport activity;
- 44 (9) "Personal floatation device", a life jacket, floatable cushion, or other device
45 approved by the United States Coast Guard;
- 46 (10) "Raft", an inflatable watercraft which has an open top and is designed to hold
47 one or more participants;
- 48 (11) "Tube", an inflatable tire inner tube or similar inflatable watercraft which has
49 an open top capable of holding one or more participants;
- 50 (12) "Watercraft", any canoe, kayak, raft, or tube propelled by the use of paddles,
51 oars, hands, poles, or other nonmechanical, nonmotorized means of propulsion.
- 52 2. Except as provided in subsection 4 of this section, an outfitter shall not be liable
53 for any injury to or the death of a participant resulting from the inherent risks of
54 paddlesport activities and, except as provided in subsection 4 of this section, no participant

55 or a participant's representative shall make any claim against, maintain any action against,
56 or recover from an outfitter for injury, loss, damage, or death of the participant resulting
57 from any of the inherent risks of paddlesport activities.

58 3. This section shall not apply to any employer-employee relationship governed by
59 the provisions of chapter 287, RSMo.

60 4. The provisions of subsection 2 of this section shall not prevent or limit the
61 liability of an outfitter that:

62 (1) Intentionally injures the participant;

63 (2) Commits an act or omission that constitutes negligence for the safety of a
64 participant in a paddlesport activity and that negligence is the proximate cause of the
65 injury or death of a participant;

66 (3) Provides unsafe equipment or watercraft to a participant and knew or should
67 have known that the equipment or watercraft was unsafe to the extent that it did cause the
68 injury;

69 (4) Fails to provide a participant a United States Coast Guard approved personal
70 floatation device; or

71 (5) Fails to use that degree of care that an ordinarily careful and prudent person
72 would use under the same or similar circumstances.

73 5. Every outfitter shall post and maintain signs which contain the warning notice
74 specified in this subsection. Such signs shall be placed in a clearly visible location on or
75 near areas where the outfitter conducts paddlesport activities. The warning notice
76 specified in this subsection shall appear on the sign in black letters on a white background
77 with each letter to be a minimum of one inch in height. Every written contract entered into
78 by an outfitter for the providing of watercraft to a participant shall contain the warning
79 notice specified in this subsection. The signs and contracts described in this subsection
80 shall contain the following warning notice:

81 "WARNING

82 Under Missouri law, an outfitter is not liable for an injury to or the death of a participant
83 in paddlesport activities resulting from the inherent risks of paddlesport activities
84 pursuant to the Revised Statutes of Missouri."

85 6. This section shall not be construed to limit or modify any defense or immunity
86 already existing in statute or common law or to affect any claim occurring prior to the
87 effective date of this section.